

REMARKS/ARGUMENTS

Status of the Claims

In the Office Action mailed June 1, 2005, claims 1-31 and 33-53 are pending. Claims 1-31 and 33-53 were rejected. This rejection is respectfully traversed. Claims 1, 8, 25, 31, 38 and 46 were amended. Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein.

The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

Claim Rejections 35 U.S.C. §112

Examiner rejected claims 8 and 46 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Without conceding the propriety of the rejection, but rather to further prosecution of this case, claims 8 and 46 have been amended and are believed to be in condition for allowance. In light of the amendment to the claims, Applicants hereby respectfully request that the rejection to these claims be withdrawn and the claims allowed.

Claim Rejections – 35. U.S.C. §102(b)

The Examiner rejected claims 1-9, 11-13, 20-25, and 30-51 under 35. U.S.C. §102 as being anticipated by the information contained in the website address www.ibutton.com (hereinafter "iButton"). Without conceding the propriety of the rejections, claims 1, 25, 31 and

38 have been amended. Support for these amendments are to be found at least in paragraphs 44 and 46 of the specification and in the Figures. No new matter has been added.

For anticipation under 35 U.S.C. §102 the reference must teach every aspect of the claimed invention either explicitly or implicitly. Any feature not directly taught must be inherently present (M.P.E.P. 706.02).

Claim 1

The cited reference, www.ibutton.com, does not teach or suggest, at least, *inter alia*, a “tracking device is configured to monitor a real-time presence,” as recited in claim 1. Rather, the iButton is limited to a device that is capable of monitoring certain aspects of time and temperature data. (Item B from the Examiner’s list of searched results from the archived version of iButton, from October 12, 1999). In fact, there is no disclosure in the cited reference as to monitoring the real-time location of the item to which the iButton is attached. The only way one is able to track a presence in the iButton is to extrapolate the physical location of the item by the data stored therein. For example, item D states, “the Thermochron iButton can travel with a container of frozen fish from carrier to carrier. On arrival at the market, the recipient has a trustworthy record of temperature and time to the minute, which can be matched against the freight record.”

Moreover, the iButton does not teach or suggest, at least, *inter alia*, a tracking device that, “obtains a temperature reading of the item on a continuous basis and creates a thermal log,” as recited in claim 1. The thermal log created by the iButton, “will not log temperatures while your PC is not connected.” (F).

Applicants enable the device to maintain a thermal log and record what the temperature actually was at any given time. Furthermore, Applicants device records and stores the thermal log even when it is not linked to the network or a PC.

Since each and every element, as set forth in the claim, is not found, either expressly or inherently described as required by the M.P.E.P. the iButton cannot be said to anticipate, “the tracking device is configured to monitor a real-time presence and obtains a temperature reading of the item on a continuous basis and creates a thermal log,” as recited in claim 1. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 2-24, 39 and 42-53 depend from independent claim 1. Because claim 1 is believed to be in condition for allowance, claims 2-24, 39 and 42-53 are also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 25

For the reasons previously discussed, the iButton does not teach or suggest, at least, *inter alia*, “tracking the real-time presence of the item with the tracking device; taking the temperature of the item on a continuous basis with the tracking device; creating the thermal log of the temperature,” as recited in claim 25. Claims 26-30 and 40 depend from independent claim 25. Because claim 25 is believed to be in condition for allowance, claims 26-30 and 40 are also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 31

For the reasons previously discussed, the iButton does not teach or suggest, at least, *inter alia*, “means for taking the temperature of the item on a continuous basis; means for tracking the real-time presence of an item; means for creating a thermal log; means for automatically transmitting the temperature and real-time presence of the item; and means for maintaining information generated from tracking the real-time presence of the item,” as recited in claim 31. Claims 33-37 and 41 depend from independent claim 31. Because claim 31 is believed to be in condition for allowance, claims 33-37 and 41 are also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 38

For the reasons previously discussed, the iButton does not teach or suggest, at least, *inter alia*, “the tracking device monitors a real-time location of the item at discrete time intervals and wherein the tracking device constantly maintains a thermal log of the temperature,” as recited in claim 38. Accordingly, withdrawal of the rejection is respectfully requested.

Claim Rejections 35 U.S.C. §103(a)

Claim 10

Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over iButton in view of Webster’s New Riverside Dictionary. Claim 10 depends from independent claim 1. Because claim 1 is believed to be in condition for allowance, claim 10 is also believed to be in condition

for allowance, at least by reason of its dependency. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 14-19, 26-29 and 52-53

Claims 14-19, 26-29 and 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over iButton in view of De La Huerga. Claims 14-19 and 52-53 depend from independent claim 1 and claims 26-29 depend from independent claim 25. Because claims 1 and 25 are believed to be in condition for allowance, claims 14-19, 26-29 and 52-53 are also believed to be in condition for allowance, at least by reason of their dependency. Accordingly, withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully submits that this application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in even better condition for allowance, the Examiner is invited to contact the undersigned attorney at 202-861-1746 in an effort to resolve any matter still outstanding before issuing another action.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036 with reference to our Docket No. 87289.2221.

Respectfully submitted,

BAKER & HOSTETLER LLP



Rabiya S. Kader
Reg. No. 48,160

Date: September 1, 2005
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304
Telephone: 202-861-1500
Facsimile: 202-861-1783